



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: December 19, 2018
MOAHR Docket No.: 19-012137
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

HEARING DECISION

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 42 CFR 438.400 to 438.424; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on December 9, 2019, from Detroit, Michigan. Petitioner appeared for the hearing and represented himself. The Department of Health and Human Services (Department) was represented by Jasmine Edwards, Eligibility Specialist and Gloria Thompson, Family Independence Manager. Huda Qandah served as Arabic translator.

ISSUE

Did the Department properly calculate the amount of Petitioner's Food Assistance Program (FAP) benefits?

Did the Department properly determine that Petitioner and his wife were eligible for Medical Assistance (MA) benefits with a monthly deductible?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Petitioner was an ongoing recipient of FAP benefits in the amount of \$[REDACTED].
2. Petitioner and his wife were previously receiving MA benefits under the Ad Care category without a monthly deductible.
3. In connection with a redetermination, Petitioner's eligibility for assistance was reviewed. (Exhibit A, pp. 9-16)

4. On the redetermination, Petitioner reported that he has unearned income from Social Security in the amount of \$█, that his wife has Social Security of \$█, and that he receives income from rental properties in the monthly amounts of █ for █, upper flat, \$█ for █ and █ for █.
5. With his redetermination, Petitioner referenced that he attached copies of the rental income receipts and his █ federal income tax return to show the expenses paid on his rental properties.
6. The Department asserted that prior to the redetermination, it was not budgeting the income Petitioner received from his rental properties and had only been considering the Social Security.
7. On █, 2019, the Department sent Petitioner a Health Care Coverage Determination Notice informing him that effective █, 2019 he and his wife were eligible for full coverage Medicare Savings Program benefits and MA with a monthly deductible of \$█ (Exhibit A, p. 6)
8. On █, 2019, the Department sent Petitioner a Notice of Case Action advising him that effective █, 2019 was approved for FAP benefits in the amount of \$█ monthly. (Exhibit A, pp. 7-8)
9. On █, 2019, Petitioner requested a hearing disputing the Department's actions with respect to his FAP and MA cases, as well as the information contained in the █, 2019 notices. (Exhibit A, pp. 3-4)

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

FAP

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The Department (formerly known as the Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

In this case, Petitioner requested a hearing disputing the Department's actions with respect to his FAP benefits. Specifically, he disputed the decrease in his benefits after the redetermination was processed. The Department testified that after processing the

redetermination and including the income that Petitioner receives from his rental properties, it determined that he was eligible for [REDACTED] in monthly FAP benefits. The Department presented a FAP EDG Net Income Results Budget which was thoroughly reviewed to determine if the Department properly calculated the amount of Petitioner's FAP benefits for the month of [REDACTED] 2019, ongoing. (Exhibit A, pp. 26-28).

All countable earned and unearned income available to the client must be considered in determining a client's eligibility for program benefits and group composition policies specify whose income is countable. BEM 500 (July 2017), pp. 1 – 5. The budget shows that the Department concluded that Petitioner's household had gross unearned income in the amount of \$[REDACTED]. The budget does not reflect any amount for earned income or self-employment income.

The Department considers the gross amount of money earned from Retirement Survivors Disability Insurance (RSDI) or Social Security in the calculation of unearned income for purposes of FAP budgeting. BEM 503 (April 2019), pp. 28-29. The Department testified that it considered [REDACTED] in Social Security for Petitioner and [REDACTED] in Social Security for Petitioner's wife. Petitioner confirmed that he and his wife receive monthly Social Security in these amounts. While [REDACTED] in monthly Social Security was accounted for, the Department was unable to explain which figures were relied upon in calculating the remaining unearned income.

The Department testified that Petitioner receives monthly income from his rental properties in the amounts of [REDACTED] for [REDACTED], upper flat, [REDACTED] for [REDACTED] and [REDACTED] for [REDACTED] but was unable to explain how the rental income was calculated or factored into the budget. Petitioner did not dispute that he receives monthly rental income in the amounts identified during the hearing.

Rental income is money an individual (landlord) receives for allowing another individual (renter) to use the landlord's property. BEM 504 (July 2014), p. 1. Some types of rental/room and board income are counted as unearned income and some as earned income or self-employment. BEM 504, p. 1. In-home rental is when a landlord rents out part of his own dwelling to another individual. BEM 504, p. 1. Farmland rental means renting land to someone for the purpose of producing farm products. BEM 504, p. 1. Room and board is money an individual receives for providing another individual with both food and a place to live. BEM 504, p. 2. Other rental income means any rental income that is not farmland rental, in-home rental or room and board. BEM 504, p. 2. The Department considers rental income of a property that is managed under 20 hours per week as unearned income and earned income for a property that is managed over 20 hours per week. BEM 504, p. 2. The Department counts the gross rent payment minus expenses as earned income from self-employment. BEM 504, p. 2. The Department will allow the higher of the following as expenses: (i) 65% of the rental payment or (ii) actual rental expenses if the landlord chooses to claim and verify the expenses. BEM 504, p. 2.

In this case, the budget shows that the Department considered the rental income as unearned income; however, while the evidence showed that Petitioner's rental income is to be considered other rental income per Department policy, there was no evidence presented regarding the amount of time that Petitioner actively engages in managing the rental property. Thus, it was unclear whether the income should be counted as earned or unearned. Additionally, it was further unclear if the Department considered 65% of the rental payments or actual rental expenses reported and verified by Petitioner. Petitioner testified that he is responsible for additional expenses that were identified on a federal tax return that he asserted he filed with the redetermination. There was no evidence that these expenses were considered. The Department was unable to explain how it calculated Petitioner's unearned income of \$[REDACTED] or that it calculated his other rental income in accordance with Department policy.

The deductions to income on the net income budgets were also reviewed. Petitioner's FAP group includes a senior/disabled/veteran (SDV) member. BEM 550 (January 2017), pp. 1-2. Groups with one or more SDV members are eligible for the following deductions to income:

- Dependent care expense.
- Excess shelter.
- Court ordered child support and arrearages paid to non-household members.
- Medical expenses for the SDV member(s) that exceed \$35.
- Standard deduction based on group size.
- An earned income deduction equal to 20% of any earned income.

BEM 554 (April 2019), p. 1; BEM 556 (July 2019), p. 3.

In this case, there was no earned income determined, thus, there was no applicable earned income deduction on the budget. There was no evidence presented that Petitioner had any out-of-pocket dependent care or child support expenses; therefore, the budget properly did not include any deduction for dependent care or child support. The Department properly applied a standard deduction of [REDACTED] which was based on Petitioner's confirmed group size of two. RFT 255 (October 2018), p. 1. With respect to the excess shelter deduction of \$[REDACTED], the Department properly applied the \$[REDACTED] heat and utility standard and testified that it considered housing expenses of \$[REDACTED] which consisted of Petitioner's monthly responsibility for property taxes and homeowners insurance for the home in which he resides. Petitioner testified that he is responsible for additional property taxes and housing expenses for his rental properties and asserted they should be considered in calculating the excess shelter deduction. (Exhibit 1). However, the Department is to consider shelter expenses for a person's home or homestead where the person lives. See BEM 554; BPG (April 2019). Therefore, the Department properly calculated the excess shelter deduction. Petitioner is eligible for a medical deduction if he submits verified medical expenses that exceed \$[REDACTED]. The budget reflects a medical deduction of [REDACTED] which Petitioner did not dispute.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that due to the errors identified above with respect to the calculation of Petitioner's income, the Department failed to establish that it acted in accordance with Department policy when it calculated Petitioner's FAP benefits effective [REDACTED], 2019.

MA

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

In this case, Petitioner requested a hearing disputing the Department's actions with respect to his MA case, specifically, the transfer of his MA benefits from the full coverage Ad-Care category to a Group 2 Aged Blind Disabled (G2S) category with a monthly deductible effective November 1, 2019. The Department testified that prior to the redetermination, it was only budgeting Petitioner's income from Social Security and was not including the income he receives from his rental properties in the MA eligibility determination. After processing the redetermination, the Department concluded that Petitioner was no longer eligible for full coverage MA under the Ad-Care category, as he had excess income. Petitioner was found to be eligible for MA under the G2S category with a monthly deductible of \$[REDACTED].

Petitioner and his wife, who have no minor children, are enrolled in Medicare and receive RSDI, are eligible for SSI-related MA, which is MA for individuals who are blind, disabled or over age 65. BEM 105 (April 2017), p. 1. Individuals are eligible for Group 1 coverage, with no deductible, if their income falls below the income limit, and eligible for Group 2 coverage, with a deductible that must be satisfied before MA is activated, when their income exceeds the income limit. BEM 105, p. 1. Ad-Care coverage is a SSI-related Group 1 MA category which must be considered before determining Group 2 MA eligibility. BEM 163 (July 2017), p. 1. Eligibility for Ad-Care is based on the client meeting nonfinancial and financial eligibility criteria. BEM 163, pp. 1-2. The eligibility requirements for Group 2 MA and Group 1 MA Ad-Care are the same, other than income. BEM 166 (April 2017), pp. 1-2.

Income eligibility for the Ad-Care program is dependent on MA fiscal group size and net income which cannot exceed the income limit in RFT 242. BEM 163, p. 2. Petitioner and his wife have a MA fiscal group of two. BEM 211 (February 2019), pp. 5-8. Effective April 1, 2019, a MA fiscal group with two members is income-eligible for full-coverage MA under the Ad-Care program if the group's net income is at or below \$1,430, which is 100 percent of the Federal Poverty Level, plus the \$20 disregard. RFT 242 (April 2017), p. 1.

The Department is to determine countable income according to SSI-related MA policies in BEM 500 and 530 *except* as explained in the countable RSDI section of BEM 163. The Department will also apply the deductions in BEM 540 (for children) or 541 (for adults) to countable income to determine net income. BEM 163, p. 2.

Additionally, deductible is a process which allows a client with excess income to become eligible for Group 2 MA if sufficient allowable medical expenses are incurred. BEM 545 (October 2018), p. 10. Individuals are eligible for Group 2 MA coverage when net income (countable income minus allowable income deductions) does not exceed the applicable Group 2 MA protected income levels (PIL), which is based on shelter area and fiscal group size. BEM 105, pp. 1-2; BEM 166, pp. 1-2; BEM 544 (July 2016), p. 1; RFT 240 (December 2013), p. 1. The PIL is a set allowance for non-medical need items such as shelter, food and incidental expenses. BEM 544, p. 1. The monthly PIL for an MA group of two living in Wayne County is \$500 per month. RFT 200 (April 2017), pp. 1-2; RFT 240, p. 1. Thus, if Petitioner's net monthly income is in excess of the \$500, he and his wife may become eligible for assistance under the deductible program, with the deductible being equal to the amount that their monthly income exceeds \$500. BEM 545, p. 1.

The Department produced an SSI-Related MA budget showing how the [REDACTED] deductible was calculated and in support of its position that Petitioner had excess income for the Ad-Care category. (Exhibit A, p. 20). The budget shows that the Department determined that Petitioner and his wife had unearned income in the amount of [REDACTED]. The Department testified that it considered Petitioner and his wife's Social Security income and the income received from monthly rental properties in calculating the unearned income amount. However, as referenced in the above discussion, the Department failed to establish that Petitioner's unearned income was [REDACTED], as the Department was unable to explain the exact amounts relied upon.

Therefore, while it is likely that Petitioner and his wife will have excess income for the Ad-Care category and will be ineligible for full coverage MA, and will likely only be eligible for MA under the G2S category with a monthly deductible, the Department has failed to establish it properly calculated the \$[REDACTED] deductible.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined that Petitioner was eligible for MA with a monthly deductible of \$[REDACTED]

DECISION AND ORDER

Accordingly, the Department's FAP and MA decisions are **REVERSED**.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Recalculate Petitioner's FAP budget for [REDACTED] 2019, ongoing;
2. Issue FAP supplements to Petitioner from [REDACTED] 2019, ongoing, for any FAP benefits he was eligible to receive, if any, but did not, in accordance with Department policy;
3. Recalculate the MA deductible for Petitioner and his wife effective [REDACTED], 2019;
4. Provide Petitioner and his wife MA coverage that they were entitled to receive, if any, but did not from [REDACTED] 2019, ongoing, and
5. Notify Petitioner of its decisions in writing.



Zainab A. Baydoun

Administrative Law Judge
for Robert Gordon, Director

Department of Health and Human Services

ZB/tm

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

Tara Roland 82-17
8655 Greenfield
Detroit, MI 48228

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

cc: FAP: M. Holden; D. Sweeney
MA- Deanna Smith; EQADHShearings
AP Specialist-Wayne County